

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1421 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD IRFAN ALIAS ASFAK

MOHMAD MUMTAZ ANSARI(MUSALMAN)

Versus

COMMISSIONER OF POLICE

AHMEDABAD

Appearance:

MR ANIL S DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

The petitioner challenges the order of his detention passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on 18.2.99 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA Act for short).

2. The Detaining Authority in the grounds of detention considered that two offences under Prohibition Act came to be registered against the petitioner. The Authority also considered the statements of 2 witnesses

who stated about the involvement of the petitioner in illegal and anti-social activities of bootlegging as well as the behaviour of high handed nature resulting in disrupting of public order. The Authority while passing the order of detention felt satisfied that privilege under Section 9(2) has to be claimed and that other alternative less drastic remedy is not likely to serve the purpose and therefore the detention order under PASA Act was necessary.

3. The petitioner has challenged the order of detention by preferring this petition under Article 226 of the Constitution of India. One of the many grounds is that the Detaining Authority has not considered the possibility of resorting to a less drastic remedy in the nature of getting the bail of the petitioner cancelled by resorting the provisions of Section 437(5) of the Code of Criminal Procedure and therefore the petition may be allowed.

4. Mr.Dave, Ld. Advocate appearing for the petitioner has restricted his arguments to the above ground alone. Mr.H.H.Patel, Ld. AGP is not able to meet that the arguments raised by Mr.Dave. He had to concede factually that the Detaining Authority has not considered the aspect of cancellation of bail. He however, submitted that the Detaining Authority has considered all the relevant aspects and has come to a subjective satisfaction about the detention being the only remedy available for preventing the petitioner from pursuing his illegal and anti-social activities.

5. If the rival side contentions are considered in light of the detention order and the ground of detention produced on record, it is clear that the detaining authority has not taken into consideration the available less drastic remedy in the nature of getting the bail of the petitioner cancelled. The Authority could have considered this aspect of resorting to that remedy before coming to a subjective satisfaction that detention under PASA was the only available remedy. This reflects clear non-application of mind by the Detaining Authority. The order therefore would be vitiated. In this regard, a decision of the Division Bench of this Court in LPA No. 1056 of 1999 in SCA 8650 of 1997 in the case of Yunusbhai Husanbhai Ghanchi Vs. District Magistrate dated 15th September, 1999 may profitably be used. In that case, the Court took a view that non-consideration of aspect of cancellation of bail can be termed non-application of mind and that it would vitiate the order of detention. In this view of the matter, the petition deserves to be

allowed. The order impugned deserves to be quashed and set aside.

7. The petition is therefore allowed. The order of detention passed by Police Commissioner, Ahmedabad City on 18.2.1999 in respect of petitioner Mohmad Irafan alias Asfak Mohmad is hereby quashed and set aside. The petitioner be set at liberty forthwith if not required in any other case. Rule made absolute accordingly. No Costs.

(A.L.Dave, J)

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